IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1586 of 2004
with
CIVIL APPLICATION No. 5367 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EMPLOYEES STATE INSURANCE CORP

Versus

RASILABEN KANJIBHAI

Appearance:

1. First Appeal No. 1586 of 2004
MR HEMANT S SHAH for Appellant No.
MR DA SURANI for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 23/12/2004

ORAL JUDGEMENT

Instant appeal filed under Section 82(2) of the Employees' State Insurance Act, 1948 ('the Act' for short) is directed against the judgement and order dated 11.2.2004 passed in EI Application No. 09/91 by the Employees Insurance Court, Rajkot ('the ESI Court' for short), by which the application filed by the respondents

herein under Section 75 of the Act, praying to pay them compensation by way of dependency benefit as heirs and legal representatives of the deceased Kanjibhai Mohanbhai who died during the treatment after receiving accidental injuries, during the course of employment came to be allowed and thereby the appellant was directed to pay all the benefits to the heirs and legal representatives of the deceased Kanjibhai Mohanbhai from 5.10.1990.

2. The appellant was the opponent whereas the respondents were the applicants before the ESI Court. They are, therefore, referred to as 'the applicants' and 'the respondent' hereinafter in this judgement.

3. The brief facts giving rise to the present appeal in nutshell are that applicant No.1 is the widow whereas applicant Nos.2 to 4 are the children of deceased Kanjibhai Mohanbhai. Deceased Kanjibhai Mohanbhai was working as a Doffar in Spinning department of Kanti Cotton Mills, Surendranagar. While he was on duty, an accident took place on 5.10.1990 at 11:20 p.m., and as a result thereof, he received injury on his left hand wrist and below the wrist. One Gogalal Velubha and Dalpatsinh were present at the time of accident. According to the applicants, the deceased had no sickness. The Supervisor of the department was informed to provide the treatment immediately after the accident. The Mill Company filled in the Form No.17 on 5.10.1990 and sent Kanjibhai Mohanbhai for treatment to the E.S.I. dispensary, Surendranagar. After giving preliminary treatment, he was shifted to the Mahatma Gandhi Hospital for better treatment where he died during the course of treatment on 10.10.1990. The concerned Doctor issued the death certificate and handed over the deadbody to his relatives.

4. According to the applicants, the death Kanjibhai Mohanbhai was caused due to accidental injury received by him while he was on duty and there was a nexus between the accidental injury and the resultant death. The applicants being the insured No. 37/2955083, filed the application for getting compensation. The said application was sent to the Regional Director, Employees' State Insurance which came to be rejected vide letter dated 28.11.1990. Aggrieved thereby, the applicants preferred an application on 28.10.1990 claiming dependency compensation before the Director General, E.S.I., Delhi. The E.S.I. Corporation, Delhi also rejected the said application on 3.7.1991. Aggrieved thereby, the applicants preferred an application under Section 75 of the Act before the E.S.I. Court, claiming

the reliefs to which the reference is made earlier.

5. The respondent contested the application by filing written statement, wherein, inter alia, the claim put forth by the applicants was denied. According to the respondent, the claim putforth by the applicants was not maintainable. The accident in question was not denied by the respondent. The injury received by the deceased was also not denied. It was denied that there was a nexus between the accidental injury and the resultant death. The sum and substance of the averments made in the written statement was that the cause of death of the deceased was not the injury received by him during the course of the employment, but it was a natural death and therefore the applicants were not entitled to any reliefs claimed in the application.

6. The E.S.I. Court framed the issues and examined witnesses, Rasilaben Kanjibhai, the widow of the deceased at Exhibit 28 and Bachubhai Himmatsingh Zala (eye witness of the accident) at Exh. 30. On behalf of the respondent, nobody had entered the witness box. The E.S.I. court, on appreciation, evaluation and critical analysis of the oral evidence as well as documentary evidence, came to the conclusion that the deceased died because of the accidental injury within five days only, as a result of development of Septicaemia and therefore the applicants were entitled to claim the relief of dependency benefit from the respondent and accordingly passed the order directing the E.S.I. Corporation to pay all the dependency benefits to the applicants from the date of accident, i.e. 5.10.1990, which has given rise to the present appeal at the instance of the respondent ESI Corporation.

7. Mr. Hemant Shah, learned advocate of the appellant has contended that there is no clinching oral evidence as well as documentary evidence which establishes nexus between the accidental injury and the resultant death. On the contrary, there is evidence to the effect that Kanjibhai Mohanbhai died a natural death as he was suffering from P.P.Maleria C Anemia with leptic coma and C Jaundice. It is also contended that the Doctor was not examined and therefore ESI Court has misdirected itself in passing the impugned order. Therefore, he urged that the impugned order is deserved to be quashed and set aside by allowing this appeal.

8. In counter submission, Mr.D.A.Surani, learned advocate of the applicant/respondents has contended that there is no infirmity in the judgement and the order

passed by the ESI Court. The ESI Court has considered the oral evidence of Bachubhai Himmatsinh Zala and the documentary evidence consisting of medical certificates issued by the ESI Hospital as well as Mahatma Gandhi Hospital. The deceased was hale and hearty on the day when the accident had taken place. After receiving the accidental injury he fell sick and suffered from P.P.Malaria, Anemia with Leptic Coma and Jaundice and because of the injury in chest and head, Septicemia had developed on the body of the deceased which has claimed his life. So, the nexus between accidental injury and the resultant death is established. He, therefore, contended that there is no substance in this appeal and urged to dismiss the appeal.

9. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgement and order and the set of evidence supplied by the learned advocates for the parties during the course of their submissions.

10. So far as the accident is concerned, there is no dispute that on 5.10.1990, the accident took place at 11:20 p.m. while the deceased was working as doffar in the spinning department of Kanti Cotton Mills, Surendranagar and as a result thereof he received injury on his left hand wrist and below the wrist. One Gogalal Velubha and Dalpatsinh were present at the time of accident.

11. Now, adverting to the evidence of Rasilaben Kanjibhai at Exh. 28 it can be seen that the deceased was having insurance no. 37/2955083. So far as the oral evidence of Bachubhai Himmatsinh Zala is concerned, he has inter alia stated that the injury was caused due to accident. After the accident, Kanjibhai Mohanbhai became unconscious and he was taken to Mahatma Gandhi Hospital at 8 O' Clock in the morning on next day. There was bandage on his head and left hand and there was injury in the chest also. The oral evidence of Rasilaben Kanjibhai unequivocally suggest that the deceased was hale and hearty and this statement has gone unchallenged.

12. So far as the documentary evidence, which are on record of the ESI Court, are concerned (Exh. 4), there is evidence that the Doctor of ESI Corporation himself has mentioned the cause of death of deceased Kanjibhai Mohanbhai as Septicaemia and due to P.P.Malaria, Anemia with Leptic Coma and Jaundice, which is on record at Exh. 39. It is an admitted position that the deceased was first admitted in the ESI Hospital and thereafter was

taken to Mahatma Gandhi Hospital for further treatment. Thus, there is evidence to believe that Kanjibhai Mohanbhai died because of Septicaemia. On having perusal of the certificate Exh.11, issued by the Doctor who has attended the deceased in Mahatma Gandhi Hospital, it is seen that the deceased was suffering from Septicaemia, P.P.Malaria, Anemia with Leptic Coma and Jaundice.

13. There is no manner of doubt that Septicaemia can be developed because of the accidental injury. There is no evidence to the effect that the deceased was having a past injury prior to the accident. It may also be noted that on behalf of ESI Corporation nobody was examined to controvert the oral evidence of the witnesses examined by the applicants. Therefore, it cannot be disputed that deceased had died because of the accidental injury which he had received during the course of his employment and therefore the heirs and legal representatives of the deceased are entitled to receive the dependency benefit from the ESI Corporation.

14. It may be noted that in the Memo of First Appeal the opponent has proposed following substantial questions of law:

(i) Whether the Lower Court has erred in deciding that the death has connection with the injuries sustained to the deceased?

(ii) Whether in absence of the clear certificate for the cause of death lower court is justified in holding that applicant is entitled for the dependency benefit?

(iii) Whether the Notification for exemption issued by the Government is retrospective or prospective?

(iv) Whether the decision of the lower court is justified and proper?

(v) Whether the order passed by the lower court is with jurisdiction or not?

However, the matter came to be admitted without formulating the substantial questions of law by this Court (Coram: A.R.Dave,J) vide order dated 23.8.2004. This Court has therefore examined all the proposed substantial questions of law while examining the merits of the appeal.

15. On overall view of the matter, there is no

discrepancy in the impugned order. According to this Court, no other conclusion was possible except the conclusion reached by the ESI Court. This Court finds itself in complete agreement with the reasoning, ultimate conclusion and the resultant order passed by the ESI Court, which does not call for any interference in this appeal filed under Section 82(2) of the Act, where the scope is very limited and circumscribed to the question of law only.

16. There was no other conclusion possible except the conclusion reached by the ESI Court.

17. Seen in the above context, the appeal lacks merit and deserves to be dismissed.

18. For the foregoing reasons, the appeal fails and accordingly it is dismissed with no order as to costs.

19. Since the appeal is dismissed, Civil Application No. 5367 of 2004 which is filed for stay of the impugned order also deserves to be dismissed and accordingly the same is dismissed. Rule is discharged. Ad interim relief granted in terms of para 5(A) shall stand vacated.

20. At this stage, Mr. Hemant Shah, learned advocate of the appellant prays to continue the ad interim relief which was granted earlier, for a further period of 8 weeks to enable the ESI Corporation to approach the higher forum. Since this Court has dismissed the appeal after discussing the evidence at length and concurring with the reasoning and ultimate conclusion and final order passed by the ESI Court and, since ESI Act is only a benevolent piece of legislation which is legislated for the benefit of the poor class of workers who die or receive injury during the course of employment, the prayer made by Mr. Shah cannot be entertained and the same is rejected.

21. Registry to send back the R&P to ESI Court forthwith.

(A.M.Kapadia,J)

Jayanti*